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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9 GARY DEWILLIAMS,

10 Plaintiff,

11 v.

12 ROBERT GROVES, ET AL.,

13 Defendants.

Case No. 17-00356-GW (PLA)

~~PROPOSED~~ STIPULATION AND
PROTECTIVE ORDER FOR
DISCLOSURE PURSUANT TO
PRIVACY ACT 5 USC 552a

Honorable George H. Wu
Courtroom 9D, 9th Floor
350 West 1st Street
Los Angeles, CA 90012

Magistrate Judge Paul L. Abrams
Roybal Federal Building
255 E. Temple Street
Los Angeles. CA. 90012

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19 IT IS HEREBY STIPULATED AND AGREED, by and between Defendant Robert
20 Groves and the Federal Bureau of Prisons that:

21 WHEREAS, this action arises under Title 42 U.S.C §1983 and Bivens vs Six
22 Unknown Agents 403 U.S. 388 (1971); and

23 WHEREAS, an order from this Court is required for the production of confidential
24 medical information that is protected from disclosure by the Privacy Act of 1974, 5 U.S.C
25 §552a, and confidential, law enforcement sensitive information for which special
26 protection from public disclosure is warranted; and
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1 WHEREAS, defendant herein, Robert Groves seeks the production of such
2 confidential information from the Federal Bureau of Prisons; and

3 WHEREAS, in order to permit defendant to access such information relevant to the
4 subject matter of this case, and to balance the needs of the defendant for this information
5 with the need of the Non-Party Federal Bureau of Prisons to protect law enforcement
6 sensitive information and the privacy interests of the plaintiff, defendant Robert Groves
7 and the Federal Bureau of Prisons hereby stipulate to and petition the Court to enter the
8 following Protective Order pursuant to 5 U.S.C. §552a(b)(11), ordering
9 production of certain information in a manner that assures its protection.

10 Such information consists of, among other things, (A) inmate central file and
11 medical records of pertaining to Plaintiff Gary deWilliams, Federal Register No. 20666-
12 013, (B) records of administrative grievances filed by Plaintiff Gary deWilliams against
13 defendant Robert Groves which may touch upon medical issues and / or sensitive subjects,
14 (C) law enforcement investigative records which may include descriptions, photographs
15 and / or video of the inside of a Federal correctional facility and which may reveal internal
16 prison security measures, otherwise generally unavailable to the public, or which may be
17 privileged or otherwise protected from disclosure under state or federal statutes, court
18 rules, case decisions, or common law.

19 The undersigned acknowledge that this Order does not confer blanket protections
20 on all disclosures or responses to discovery and that the protection it affords from public
21 disclosure and use extends only to the limited information or items that are entitled to
22 confidential treatment under the applicable legal principles. The undersigned further
23 acknowledge, as set forth in Section 11.3, below, that this Stipulated Protective Order does
24 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth
25 the procedures that must be followed and the standards that will be applied when a party
26 seeks permission from the court to file material under seal.

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1 It is the intent of the undersigned that information will not be designated as
2 confidential for tactical reasons and that nothing be so designated without a good faith
3 belief that it has been maintained in a confidential, non-public manner, and there is good
4 cause why it should not be part of the public record of this case.

5 Accordingly, in order to adequately protect certain information that the undersigned
6 are entitled to keep confidential, to ensure that the undersigned are permitted reasonable,
7 necessary uses of such material in preparation for and in the conduct of trial, to address
8 their handling at the end of the litigation, and serve the ends of justice, a protective order
9 for such information is justified in this matter.

10 1. DEFINITIONS

11 1.1 Action: Gary deWilliams v. Robert Groves, et al., ED CV 17-00356-GW
12 (PLA)

13 1.2 Challenging Party: a Party or Non-Party that challenges the designation of
14 information or items under this Order.

15 1.3 "CONFIDENTIAL" Information or Items: information (regardless of how it
16 is generated, stored or maintained) or tangible things that qualify for protection under
17 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
18 Statement.

19 1.4 Counsel: Counsel of Record and their support staff.

20 1.5 Designating Party: a Party or Non-Party that designates information or items
21 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

22 1.6 Disclosure or Discovery Material: all items or information, regardless of the
23 medium or manner in which it is generated, stored, or maintained (including, among other
24 things, testimony, transcripts, and tangible things), that are produced or generated in
25 disclosures or responses to discovery in this matter.

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1 1.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this Action.

4 1.8 Non-Party: For purposes of this order, the Non-Party is the Federal Bureau
5 of Prisons.

6 1.9 Counsel of Record: attorneys who are not employees of a party to this Action
7 but are retained to represent or advise a party to this Action and have appeared in this
8 Action on behalf of that party or are affiliated with a law firm which has appeared on
9 behalf of that party and includes support staff.

10 1.10 Party: For the purposes of this order, the Party is Defendant Robert Groves,
11 including all of his consultants, retained experts, and Counsel of Record (and their support
12 staffs).

13 1.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
14 Material in this Action.

15 1.12 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
18 their employees and subcontractors.

19 1.13 Protected Material: any Disclosure or Discovery Material that is designated
20 as "CONFIDENTIAL."

21 1.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
22 a Producing Party.

23 2. SCOPE

24 The protections conferred by this Stipulation and Order cover not only Protected
25 Material (as defined above), but also (1) any information copied or extracted from
26 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
27 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
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1 that might reveal Protected Material. Any use of Protected Material at trial shall be
2 governed by the orders of the trial judge. This Order does not govern the use of Protected
3 Material at trial.

4 3. DURATION

5 Even after final disposition of this litigation, the confidentiality obligations imposed
6 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
7 or a court order otherwise directs. Final disposition shall be deemed to be the later of
8 (1) dismissal of all claims and defenses in this Action, with or without prejudice; and
9 (2) final judgment hereinafter the completion and exhaustion of all appeals, rehearing's,
10 remands, trials, or reviews of this Action, including the time limits for filing any motions
11 or applications for extension of time pursuant to applicable law.

12 4. DESIGNATING PROTECTED MATERIAL

13 4.1 Exercise of Restraint and Care in Designating Material for Protection. Each
14 Party or Non-Party that designates information or items for protection under this Order
15 must take care to limit any such designation to specific material that qualifies under the
16 appropriate standards. The Designating Party must designate for protection only those
17 parts of material, documents, items, or oral or written communications that qualify so that
18 other portions of the material, documents, items, or communications for which protection
19 is not warranted are not swept unjustifiably within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that
21 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
22 to unnecessarily encumber the case development process or to impose unnecessary
23 expenses and burdens on other parties) may expose the Designating Party to sanctions.

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.

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4.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

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1 (c) for information produced in some form other than documentary and
2 for any other tangible items, that the Producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information is stored the legend
4 "CONFIDENTIAL." If only a portion or portions of the information warrants protection,
5 the Producing Party, to the extent practicable, shall identify the protected portion(s).

6 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
7 to designate qualified information or items does not, standing alone, waive the Designating
8 Party's right to secure protection under this Order for such material. Upon timely
9 correction of a designation, the Receiving Party must make reasonable efforts to assure
10 that the material is treated in accordance with the provisions of this Order.

11 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 5.1 Timing of Challenges. The Party or Non-Party may challenge a designation
13 of confidentiality at any time that is consistent with the Court's Scheduling Order.

14 5.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
15 process under Local Rule 37.1 et seq.

16 5.3 The burden of persuasion in any such challenge proceeding shall be on the
17 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
18 harass or impose unnecessary expenses and burdens on other parties) may expose the
19 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
20 confidentiality designation, all parties shall continue to afford the material in question the
21 level of protection to which it is entitled under the Producing Party's designation until the
22 Court rules on the challenge.

23 6. ACCESS TO AND USE OF PROTECTED MATERIAL

24 6.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this Action
26 only for prosecuting, defending, or attempting to settle this Action. Such Protected
27 Material may be disclosed only to the categories of persons and under the conditions
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described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

6.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) the court and its personnel;

(d) court reporters and their staff;

(e) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(g) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to

1 depositions that reveal Protected Material may be separately bound by the court reporter
2 and may not be disclosed to anyone except as permitted under this Stipulated Protective
3 Order; and

4 (h) any mediator or settlement officer, and their supporting personnel,
5 mutually agreed upon by any of the parties engaged in settlement discussions.

6 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
7 OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation that
9 compels disclosure of any information or items designated in this Action as
10 "CONFIDENTIAL," that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification
12 shall include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order
14 to issue in the other litigation that some or all of the material covered by the subpoena or
15 order is subject to this Protective Order. Such notification shall include a copy of this
16 Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with the
20 subpoena or court order shall not produce any information designated in this action as
21 "CONFIDENTIAL" before a determination by the court from which the subpoena or order
22 issued, unless the Party has obtained the Designating Party's permission. The Designating
23 Party shall bear the burden and expense of seeking protection in that court of its
24 confidential material and nothing in these provisions should be construed as authorizing
25 or encouraging a Receiving Party in this Action to disobey a lawful directive from another
26 court.

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1 8. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
2 IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by the
4 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
5 produced by the Non-Party in connection with this litigation is protected by the remedies
6 and relief provided by this Order. Nothing in these provisions should be construed as
7 prohibiting the Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party's confidential information in its possession, and the Party is subject
10 to an agreement with the Non-Party not to produce the Non-Party's confidential
11 information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the
13 Non-Party that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably specific
17 description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within
21 14 days of receiving the notice and accompanying information, the Receiving Party may
22 produce the Non-Party's confidential information responsive to the discovery request. If
23 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
24 information in its possession or control that is subject to the confidentiality agreement with
25 the Non-Party before a determination by the court. Absent a court order to the contrary,
26 the Non-Party shall bear the burden and expense of seeking protection in this court of its
27 Protected Material.

1 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
5 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
6 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
7 unauthorized disclosures were made of all the terms of this Order, and (d) request such
8 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
9 attached hereto as Exhibit A.

10 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain inadvertently
13 produced material is subject to a claim of privilege or other protection, the obligations of
14 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
15 This provision is not intended to modify whatever procedure may be established in an e-
16 discovery order that provides for production without prior privilege review. Pursuant to
17 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
18 effect of disclosure of a communication or information covered by the attorney-client
19 privilege or work product protection, the parties may incorporate their agreement in the
20 stipulated protective order submitted to the court.

21 11. MISCELLANEOUS

22 11.1 Right to Further Relief. Nothing in this Order abridges the right of any person
23 to seek its modification by the Court in the future.

24 11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
25 Order, no Party waives any right it otherwise would have to object to disclosing or
26 producing any information or item on any ground not addressed in this Stipulated
27 Protective Order. Similarly, no Party waives any right to object on any ground to use in
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1 evidence of any of the material covered by this Protective Order.

2 11.3 Filing Protected Material. A Party that seeks to file under seal any Protected
3 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
4 under seal pursuant to a court order authorizing the sealing of the specific Protected
5 Material at issue. If a Party's request to file Protected Material under seal is denied by the
6 court, then the Receiving Party may file the information in the public record unless
7 otherwise instructed by the court.

8 12. FINAL DISPOSITION

9 After the final disposition of this Action, as defined in Section 1.1, within 60 days
10 of a written request by the Designating Party, each Receiving Party must return all
11 Protected Material to the Producing Party or destroy such material. As used in this
12 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
13 summaries, and any other format reproducing or capturing any of the Protected Material.
14 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
15 a written certification to the Producing Party (and, if not the same person or entity, to the
16 Designating Party) by the 60 day deadline that (1) identifies (by category, where
17 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
18 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any
19 other format reproducing or capturing any of the Protected Material. Notwithstanding this
20 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers,
21 trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition
22 and trial exhibits, expert reports, attorney work product, and consultant and expert work
23 product, even if such materials contain Protected Material. Any such archival copies that
24 contain or constitute Protected Material remain subject to this Protective Order as set forth
25 in Section 3 (DURATION).

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1 13. VIOLATION OF THIS ORDER

2 Any violation of this Order may be punished by any and all appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.
4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
6

7 DATED 1/8/2019

8 
9 Attorney for Non-Party Bureau of Prisons
10

11 DATED: 1/08/2019

12 
13 ROBERT RABE
14 Attorney for Defendant Robert Groves
15

16 DATED: _____
17

18 _____
19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
20

21 DATED: January 9, 2019

22 
23 Paul L. Abrams
24 UNITED STATES MAGISTRATE JUDGE
25
26
27
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1 EXHIBIT A

2 ACKNOWLEDGMENT OF PROTECTIVE ORDER

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I
5 have read in its entirety and understand the Stipulation and Protective Order that was
6 issued by the United States District Court for the Central District of California on _____
7 (date issued) in the case of *Gary deWilliams v. Robert Groves, et al.*, ED CV 17-00356-
8 GW (PLA). I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose
10 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
11 not disclose in any manner any information or item that is subject to this Stipulated
12 Protective Order to any person or entity except in strict compliance with the provisions of
13 this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for
15 the Central District of California for the purpose of enforcing the terms of this Stipulation
16 and Protective Order, even if such enforcement proceedings occur after termination of this
17 action. I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this action or
20 any proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22
23 City and State where sworn and signed: _____

24 Printed name: _____

25
26 Signature: _____